

By: Menendez

H.B. No. 563

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the evaluation of applications for certain financial  
3 assistance administered by the Texas Department of Housing and  
4 Community Affairs.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 2306.1114(a), Government Code, is  
7 amended to read as follows:

8 (a) Not later than the 14th day after the date an  
9 application or a proposed application for housing funds described  
10 by Section 2306.111 has been filed, the department shall provide  
11 written notice of the filing of the application or proposed  
12 application to the following persons:

13 (1) the United States representative who represents  
14 the community containing the development described in the  
15 application;

16 (2) members of the legislature who represent the  
17 community containing the development described in the application;

18 (3) the presiding officer of the governing body of the  
19 political subdivision containing the development described in the  
20 application;

21 (4) any member of the governing body of a political  
22 subdivision who represents the area containing the development  
23 described in the application;

24 (5) the superintendent and the presiding officer of

1 the board of trustees of the school district containing the  
2 development described in the application; and

3 (6) any neighborhood organizations on record with the  
4 state, municipality, or county in which the development described  
5 in the application is to be located and whose boundaries contain the  
6 proposed development site.

7 SECTION 2. Section 2306.6703, Government Code, is amended  
8 to read as follows:

9 Sec. 2306.6703. INELIGIBILITY FOR CONSIDERATION. (a) An  
10 application is ineligible for consideration under the low income  
11 housing tax credit program if:

12 (1) at the time of application or at any time during  
13 the two-year period preceding the date the application round  
14 begins, the applicant or a related party is or has been:

15 (A) a member of the board; or

16 (B) the director, a deputy director, the director  
17 of housing programs, the director of compliance, the director of  
18 underwriting, or the low income housing tax credit program manager  
19 employed by the department;

20 (2) the applicant proposes to replace in less than 15  
21 years any private activity bond financing of the development  
22 described by the application, unless:

23 (A) the applicant proposes to maintain for a  
24 period of 30 years or more 100 percent of the development units  
25 supported by housing tax credits as rent-restricted and exclusively  
26 for occupancy by individuals and families earning not more than 50  
27 percent of the area median income, adjusted for family size; [~~and~~]

1 (B) at least one-third of all the units in the  
2 development are public housing units or Section 8 project-based  
3 units; or

4 (C) the proceeds of the private activity bond  
5 financing will only be redeemed in an amount consistent with their  
6 proportionate amortization; or

7 (D) the proceeds of the private activity bond  
8 financing will only be redeemed in an amount necessary to ensure the  
9 financial feasibility of the proposal described by the application  
10 and according to underwriting criteria established by the  
11 department and provided that such redemption to the extent that it  
12 reduces the bond amount to less than 50 percent of the cost of the  
13 land plus depreciable basis in the first five years of operation is  
14 allowed only if the Bond Review Board has determined that there  
15 remain sufficient funds to fund all other multifamily applications  
16 for such bonds that do not call for such a reduction;

17 (3) unless the applicant obtains approval of the  
18 development from the governing body of the appropriate municipality  
19 or county containing the development, the applicant proposes to  
20 develop [~~construct~~] a new construction development that is located  
21 one linear mile or less from a development that:

22 (A) serves the same type of household as the new  
23 development [~~, regardless of whether the developments serve~~  
24 ~~families, elderly individuals, or another type of household~~];

25 (B) has received an allocation of housing tax  
26 credits for new construction at any time during the three-year  
27 period preceding the date the application round begins; and

1 (C) has not been withdrawn or terminated from the  
2 low income housing tax credit program; or

3 (4) the development is located in a municipality or,  
4 if located outside a municipality, a county that has more than twice  
5 the state average of units per capita supported by housing tax  
6 credits or private activity bonds, unless the applicant:

7 (A) obtains [~~has obtained prior~~] approval of the  
8 development from the governing body of the appropriate municipality  
9 or county containing the development; and

10 (B) provides, not later than the 30th day before  
11 the date the board first meets to consider applications for an  
12 allocation of housing tax credits, [~~has included in the~~  
13 ~~application~~] a written statement of support from that governing  
14 body referencing this section and authorizing an allocation of  
15 housing tax credits for the development.

16 (b) Subsections (a)(2), (3), and (4) do [~~Subsection (a)(3)~~  
17 ~~does~~] not apply to a development:

18 (1) that is using:

19 (A) federal HOPE VI funds or other similar funds  
20 received through the United States Department of Housing and Urban  
21 Development to assist in the preservation, through same-site  
22 reconstruction or rehabilitation, of distressed federally assisted  
23 housing;

24 (B) locally approved funds received from a public  
25 improvement district or a tax increment financing district;

26 (C) funds provided to the state under the  
27 Cranston-Gonzalez National Affordable Housing Act (42 U.S.C.

1 Section 12701 et seq.); or

2 (D) funds provided to the state and participating  
3 jurisdictions under the Housing and Community Development Act of  
4 1974 (42 U.S.C. Section 5301 et seq.); or

5 (2) that is located in a county with a population of  
6 less than one million[~~+~~

7 [~~(3) that is located outside of a metropolitan~~  
8 ~~statistical area; or~~

9 [~~(4) that a local government where the project is to be~~  
10 ~~located has by vote specifically allowed the construction of a new~~  
11 ~~development located within one linear mile or less from a~~  
12 ~~development under Subsection (a)].~~

13 SECTION 3. Section 2306.6704(b-1), Government Code, is  
14 amended to read as follows:

15 (b-1) The preapplication process must require the applicant  
16 to provide the department with evidence that the applicant has  
17 notified the following entities with respect to the filing of the  
18 application:

19 (1) any neighborhood organizations on record with the  
20 state, municipality, or county in which the development is to be  
21 located and whose boundaries contain the proposed development site;

22 (2) the superintendent and the presiding officer of  
23 the board of trustees of the school district containing the  
24 development;

25 (3) the presiding officer of the governing body of any  
26 municipality containing the development and all elected members of  
27 that body;

1           (4) the presiding officer of the governing body of the  
2 county containing the development and all elected members of that  
3 body; and

4           (5) the state senator and state representative of the  
5 district containing the development.

6           SECTION 4. Section 2306.6705, Government Code, is amended  
7 to read as follows:

8           Sec. 2306.6705. GENERAL APPLICATION REQUIREMENTS. An  
9 application must contain at a minimum the following written,  
10 detailed information in a form prescribed by the board:

11           (1) a description of:

12                   (A) the financing plan for the development,  
13 including any nontraditional financing arrangements;

14                   (B) the use of funds with respect to the  
15 development;

16                   (C) the funding sources for the development,  
17 including:

18                           (i) construction, permanent, and bridge  
19 loans; and

20                           (ii) rents, operating subsidies, and  
21 replacement reserves; and

22                   (D) the commitment status of the funding sources  
23 for the development;

24           (2) if syndication costs are included in the eligible  
25 basis, a justification of the syndication costs for each cost  
26 category by an attorney or accountant specializing in tax matters;

27           (3) from a syndicator or a financial consultant of the

1 applicant, an estimate of the amount of equity dollars expected to  
2 be raised for the development in conjunction with the amount of  
3 housing tax credits requested for allocation to the applicant,  
4 including:

5 (A) pay-in schedules; and

6 (B) syndicator consulting fees and other  
7 syndication costs;

8 (4) if rental assistance, an operating subsidy, or an  
9 annuity is proposed for the development, any related contract or  
10 other agreement securing those funds and an identification of:

11 (A) the source and annual amount of the funds;

12 (B) the number of units receiving the funds; and

13 (C) the term and expiration date of the contract  
14 or other agreement;

15 (5) if the development is located within the  
16 boundaries of a political subdivision with a zoning ordinance,  
17 evidence in the form of a letter from the chief executive officer of  
18 the political subdivision or from another local official with  
19 jurisdiction over zoning matters that states that:

20 (A) the development is permitted under the  
21 provisions of the ordinance that apply to the location of the  
22 development; or

23 (B) the applicant is in the process of seeking  
24 the appropriate zoning and has signed and provided to the political  
25 subdivision a release agreeing to hold the political subdivision  
26 and all other parties harmless in the event that the appropriate  
27 zoning is denied;

1           (6) if an occupied development is proposed for  
2 rehabilitation:

3           (A) an explanation of the process used to notify  
4 and consult with the tenants in preparing the application;

5           (B) a relocation plan outlining:

6                 (i) relocation requirements; and

7                 (ii) a budget with an identified funding  
8 source; and

9           (C) if applicable, evidence that the relocation  
10 plan has been submitted to the appropriate local agency;

11           (7) a certification of the applicant's compliance with  
12 appropriate state and federal laws, as required by other state law  
13 or by the board;

14           (8) any other information required by the board in the  
15 qualified allocation plan; and

16           (9) evidence that the applicant has notified the  
17 following entities with respect to the filing of the application:

18                 (A) any neighborhood organizations on record  
19 with the state, municipality, or county in which the development is  
20 to be located and whose boundaries contain the proposed development  
21 site;

22                 (B) the superintendent and the presiding officer  
23 of the board of trustees of the school district containing the  
24 development;

25                 (C) the presiding officer of the governing body  
26 of any municipality containing the development and all elected  
27 members of that body;



1 (D) the presiding officer of the governing body  
2 of the county containing the development and all elected members of  
3 that body; and

4 (E) the state senator and state representative of  
5 the district containing the development.

6 SECTION 5. Section 2306.6710(b), Government Code, is  
7 amended to read as follows:

8 (b) If an application satisfies the threshold criteria, the  
9 department shall score and rank the application using a point  
10 system that:

11 (1) prioritizes in descending order criteria  
12 regarding:

13 (A) financial feasibility of the development  
14 based on the supporting financial data required in the application  
15 that will include a project underwriting pro forma from the  
16 permanent or construction lender;

17 (B) quantifiable community participation with  
18 respect to the development, evaluated on the basis of written  
19 statements from any neighborhood organizations on record with the  
20 state, municipality, or county in which the development is to be  
21 located and whose boundaries contain the proposed development site;

22 (C) the income levels of tenants of the  
23 development;

24 (D) the size and quality of the units;

25 (E) the commitment of development funding by  
26 local political subdivisions;

27 (F) the level of community support for the

1 application, evaluated on the basis of written statements from the  
2 state representative or the state senator that represents the  
3 district containing the proposed development site;

4 (G) the rent levels of the units;

5 (H) the cost of the development by square foot;

6 (I) the services to be provided to tenants of the  
7 development; and

8 (J) whether, at the time the complete application  
9 is submitted or at any time within the two-year period preceding the  
10 date of submission, the proposed development site is located in an  
11 area declared to be a disaster under Section 418.014;

12 (2) uses criteria imposing penalties on applicants or  
13 affiliates who have requested extensions of department deadlines  
14 relating to developments supported by housing tax credit  
15 allocations made in the application round preceding the current  
16 round or a developer or principal of the applicant that has been  
17 removed by the lender, equity provider, or limited partners for its  
18 failure to perform its obligations under the loan documents or  
19 limited partnership agreement; and

20 (3) encourages applicants to provide free notary  
21 public service to the residents of the developments for which the  
22 allocation of housing tax credits is requested.

23 SECTION 6. Section 2306.6711(f), Government Code, is  
24 amended to read as follows:

25 (f) The board may allocate housing tax credits to  
26 developments [more than one development] in a single community that  
27 are or will be located one linear mile or less from each other, as

1 defined by department rule, in the same calendar year [~~only~~] if:

2 (1) the community is located in a county with a  
3 population of one million or less;

4 (2) one or more of the allocations involves the  
5 rehabilitation of existing developments and not more than one of  
6 the allocations involves new construction; or

7 (3) the developments each serve a different type of  
8 household from the other [~~the developments are or will be located~~  
9 ~~more than one linear mile apart~~]. [~~This subsection applies only to~~  
10 ~~communities contained within counties with populations exceeding~~  
11 ~~one million.~~]

12 SECTION 7. The changes in law made by this Act relating to  
13 applications for financial assistance administered by the Texas  
14 Department of Housing and Community Affairs apply only to an  
15 application filed on or after the effective date of this Act. An  
16 application filed before the effective date of this Act is governed  
17 by the law in effect on the date the application was filed, and the  
18 former law is continued in effect for that purpose.

19 SECTION 8. This Act takes effect September 1, 2009.